

**WASTEWATER TREATMENT
AGREEMENT**

BETWEEN

CITY OF ELIZABETHTOWN, KENTUCKY

AND

**HARDIN COUNTY
WATER DISTRICT NO. 2**

November 20, 2018

**KENTUCKY
PUBLIC SERVICE COMMISSION**

Gwen R. Pinson
Executive Director



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1/31/2019

PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

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WASTEWATER TREATMENT AGREEMENT

This is a Wastewater Treatment Agreement (the “Agreement”), made and entered into as of November 20, 2018 by and between the **CITY OF ELIZABETHTOWN, KENTUCKY**, P.O. Box 550, Elizabethtown, Kentucky 42702, hereinafter referred to as the “City”; and **HARDIN COUNTY WATER DISTRICT NO. 2**, P.O. Box 970, Elizabethtown, Kentucky, 42702, hereinafter referred to as “District”;

WITNESSETH

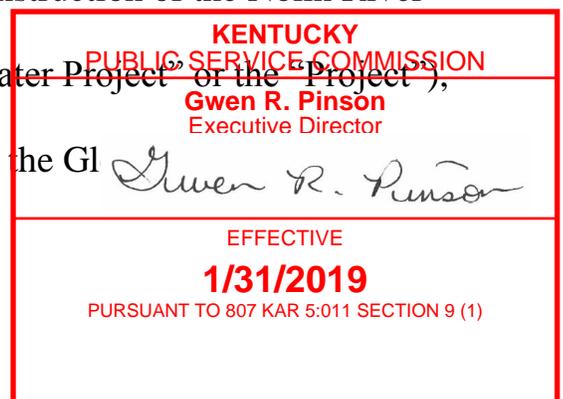
WHEREAS, the City is a duly organized and existing municipal corporation and city of the home rule class of the Commonwealth of Kentucky;

WHEREAS, the City owns and operates a wastewater treatment plant known as the Valley Creek Wastewater Treatment Plant (the “VCWWTP”);

WHEREAS, the District is a water district organized pursuant to KRS Chapter 74;

WHEREAS, the District seeks to provide wastewater collection service for an area in southern Hardin County;

WHEREAS, the District has commenced construction of the Nolin River Watershed Wastewater Project (the “Nolin Wastewater Project” or the “Project”), which will provide wastewater collection service in the Gl



County. The District anticipates that the Project will be substantially completed and placed into service on or about April 1, 2019;

WHEREAS, the VCWWTP was financed, in part, by a low interest loan from the Kentucky Infrastructure Authority (“KIA”) and has been designated as a Regional Treatment Facility by KIA;

WHEREAS, the VCWWTP is ideally located and has adequate reserve capacity to treat the wastewater generated in the Glendale area;

WHEREAS, the City and the District agree that the most efficient and environmentally sound wastewater treatment system should be used to serve the citizens of southern Hardin County; and

WHEREAS, the City and the District agree that the most efficient and environmentally sound method of treating wastewater originating from the Glendale Service Area is treatment of the wastewater at the VCWWTP, instead of treating it at a wastewater treatment facility that the District would construct and operate.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the foregoing and the mutual promises, covenants, terms, and conditions made and exchanged in this Agreement, the Parties agree as follows:

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1. **Initial Term.** The initial term of this Agreement shall extend for a period of approximately 30 years (the “Initial Term”), commencing on the Effective Date hereof as provided in paragraph 22 of this Agreement and terminating on March 31, 2049, unless automatically renewed pursuant to the provisions of paragraph 2, or otherwise extended or modified by written agreement of the Parties.

2. **Renewal Terms.** This Agreement shall automatically be renewed for an additional term of ten (10) years (the “Renewal Term”) unless either Party gives the other Party written notice of its intent not to renew the Agreement at least five (5) years prior to the expiration of the Initial Term. Thereafter, at the end of each Renewal Term, the Agreement shall automatically be renewed for an additional term of ten (10) years unless either Party gives the other Party written notice of its intent not to renew the Agreement at least five (5) years prior to the expiration of the Renewal Term.

3. **Service Area.** The District plans to provide wastewater collection services in the Glendale area in southern Hardin County. The service area is depicted in **Exhibit A**, which is attached hereto and incorporated herein by reference. This area is designated as the “Glendale Service Area ^{KENTUCKY} includes only a portion of the Nolin River Watershed.

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4. **City's Agreement to Treat.** Subject to the terms, conditions, and limitations set forth in this Agreement, the City shall adequately treat the wastewater generated in the Glendale Service Area, collected by the District, and conveyed to the VCWWTP. The City has no obligation under this Agreement to treat any wastewater generated outside the boundaries of the Glendale Service Area without prior approval by both Parties.

5. **Discharge Point.** The District shall convey the wastewater that is generated in the Glendale Service Area to the VCWWTP. The District shall discharge the wastewater into the Valley Creek interceptor just prior to the VCWWTP at the point previously designated by the City.

6. **Metering Equipment.** The City shall measure the wastewater flow by using two (2) open channel flow metering devices known as Parshall Flumes. The District shall install, at its own expense, these two (2) Parshall Flumes to meter the wastewater flow it discharges to the VCWWTP. The Parshall Flumes shall be installed in accordance with the plans and specifications prepared by Strand Associates, Inc. The plans and specifications will be reviewed and approved by the City prior to construction of the Parshall Flumes. Collectively, the Parshall Flumes, transducers, control equipment, and other appurtenances shall be referred to as the "Metering Equipment."

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7. **Ownership of Metering Equipment.** Once the Metering Equipment has been installed, placed into service, and accepted by both Parties, title and ownership of the Metering Equipment shall vest in the City. Thereafter, the City shall be responsible for the cost of operating and maintaining the Metering Equipment.

8. **Calibration of Metering Equipment.** The City shall have the Metering Equipment tested and calibrated at least once every 12 months by a qualified, independent third party. The City shall provide advance notice to the District at least three (3) business days prior to conducting the testing. The District shall have the right to have a representative present during the testing and calibration process. Within three (3) business days after receipt of the test results, the City shall provide the results to the appropriate official designated by the District. The Metering Equipment may be tested and calibrated more frequently at the specific request of either Party. In this event, the testing and calibration shall be performed by a method that is agreeable to both Parties.

9. **Billing Adjustment.** If the Metering Equipment registers not more than two percent (2%) above or below the test result, it shall be deemed accurate.

If the Metering Equipment registers outside of these acceptable limits, it shall be deemed inaccurate. If inaccurate, the previous readings shall be adjusted for the 3-month period prior to the test in accordance with the r

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found by such test. Billings for this 3-month period shall be recalculated and the District's account shall be credited or charged accordingly. If the Metering Equipment fails to register usage for any period, the amount of wastewater discharged during such period shall be estimated by any reasonable means agreeable to both the City and the District.

10. **Billing and Payment Procedure.** The City shall furnish the District at the address shown in paragraph 23 of this Agreement, not later than the **fifth** business day of each month, an itemized statement of the amount of wastewater discharged by the District and treated by the City during the preceding billing cycle and the total charge for treatment thereof. The District shall pay those charges not later than the **25th** day of each month.

11. **Cost Based Rates.** The City shall charge the District a wholesale rate based upon the City's actual cost of treating the wastewater that the District discharges into the VCWWTP. The City acknowledges its obligation, under KRS 224A.306 and its Assistance Agreements with KIA, to base the wholesale rate on its actual cost of providing wholesale wastewater treatment services.

12. **Initial Rate Schedule.** The City's initial wholesale rates for treating wastewater generated in the Glendale Service Area and discharged by the District at the VCWWTP are set forth in the schedule shown below:

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Usage (Gallons per Month)	Rate per 1,000 Gallons
Zero to 2,000,000	\$2.46
2,001,000 to 5,000,000	\$2.33
5,001,000 to 15,000,000	\$2.20
Over 15,000,000	\$2.07

The rates set forth in the schedule shown above reflect the City’s actual cost of providing wholesale wastewater treatment services for the District as of the Effective Date of this Agreement.

13. **Capacity Fees.** The City shall charge the District a one-time fee for each customer that the District connects to the District’s wastewater collection system. This fee shall be referred to as a “Capacity Fee.” The VCWWTP has the capacity to treat 13,000,000 gallons per day. Each gallon of wastewater that the District discharges to the VCWWTP for treatment utilizes a portion of this capacity. The purpose of the Capacity Fee is to reimburse the City for the cost of constructing each gallon of treatment capacity. The City has calculated this cost to be approximately \$2.00 for each gallon per day unit of treatment capacity.

To facilitate the assessment and collection of these Capacity Fees, the Parties have agreed to “standardize” the Capacity Fees based upon the retail

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customer's water meter size. The table shown below sets forth these Standard Capacity Fees for the smaller water meters (i.e. 2-inches and smaller).

For a prospective wastewater customer requiring a water meter larger than 2-inches, the Parties will agree upon an appropriate Capacity Fee before the District connects the customer to its wastewater collection system.

Standard Capacity Fees	
Meter Size	Capacity Fee
5/8" x 3/4"	\$500
1"	\$800
1 1/2"	\$1,300
2"	\$5,000

The District shall maintain an accurate record of all Capacity Fees due the City for each wastewater customer that connects to the District's wastewater collection system. The record shall include, at a minimum, the following information: each customer's name, location, and the amount of the Capacity Fee assessed to each customer. On or before the **25th** day of each month, the District shall remit payment to the City for the total amount of the Capacity Fees assessed by the District during the previous month. At the same time, the District shall also provide the City with an itemized list of the new wastew

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connected by the District to its wastewater collection system during the previous month and the Capacity Fee for each customer.

14. **Rate Modification.** Commencing in 2021, the City shall have the right to adjust or modify annually the wholesale rates set forth in paragraph 12 and the Capacity Fees set forth in paragraph 13 to reflect changes in the City’s cost of treating the wastewater discharged by the District. Any increase or decrease in the wholesale rates shall be based on a demonstrable increase or decrease in the cost of performance hereunder.

15. **Advance Notice of Rate Modification.** The City shall notify the District in writing of the proposed wholesale rate or Capacity Fee adjustment or modification at least thirty (30) days before enacting an ordinance adopting the rates or Capacity Fees. This will enable the District to review and comment on the proposed rates or Capacity Fees prior to their adoption. At the expiration of the thirty (30) day review period, the City may establish and adopt the actual wholesale rates or Capacity Fees to be charged the District and shall immediately notify the District in writing of the new wholesale rates and Capacity Fees.

16. **Effective Date of Rate Modification.** The effective date of the new wholesale rates and Capacity Fees shall be at least 60 days after the City adopts the new rates. This will enable the City to file a revised tariff with the Kentucky Public Service Commission (“PSC”) and obtain PSC approval.

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This will also provide the District sufficient time to obtain a Purchased Sewer Adjustment from the PSC pursuant to 807 KAR 5:075.

17. **Sewer Use Ordinance.** The District shall comply with, and shall require its agents, contractors, and customers to comply with, the City’s Sewer Use Ordinance and Pre-Treatment Program as codified in City of Elizabethtown Ordinance No. 11-2002, and any subsequent amendments thereto.

18. **Clean Water Discharges.** The District shall adopt and enforce rules and regulations that prohibit its customers from discharging any clean water to any wastewater lateral line or wastewater collection line. Such rules and regulations shall further prohibit the District’s customers from making discharges from sump pumps, roof runoffs, area drains, other drains, surface runoffs, or any other source that become an inflow to the District’s wastewater collection system. The District shall strictly enforce such rules and regulations. The District further agrees to take all actions reasonably necessary to prevent or disconnect any such discharge source.

19. **Industrial and Commercial Users.** The Glendale Service Area includes the 1,551 acre Glendale Industrial Tract, which is also known as the Glendale Industrial Mega Site (the “Mega Site”). The wastewater facilities being constructed by the District have been designed to accommodate the anticipated

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wastewater discharges from industries that locate within the Mega Site. To date, no industry has located within the Mega Site.

The Parties acknowledge that the wastewater discharge from an “Industrial User,” as defined in the City’s Sewer Use Ordinance, or a Commercial User has the potential to present unique challenges to both the District and the City. Therefore, the District shall not connect or commit to connect any new Industrial User or Commercial User to its wastewater collection system until officials from both the City and the District have thoroughly reviewed the characteristics of the proposed discharge, the estimated daily quantity of flow, and the compatibility of the proposed discharge to the treatment process utilized at the VCWWTP.

The District shall not permit a new Industrial User or Commercial User to make any discharge into the District’s wastewater collection system until the District and the new Industrial User or Commercial User have executed a written User Agreement governing the new Industrial User or Commercial User’s proposed wastewater discharge and the User Agreement has been approved by the City.

20. **Permit.** The only permit that the District is required to obtain is a Kentucky Intersystem Operational Permit (the “KISOP”). The District obtained a KISOP on July 20, 2018. The District’s KISOP was is

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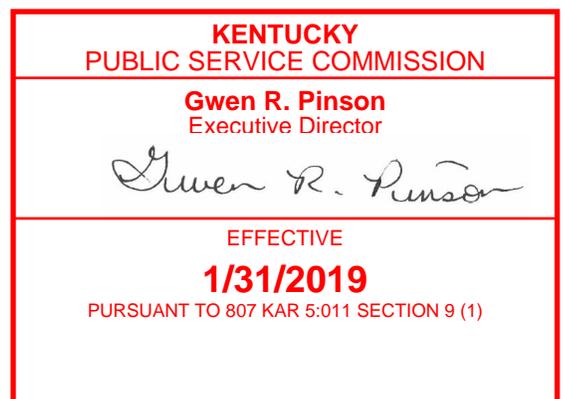
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Environment Cabinet, Department for Environmental Protection, pursuant to 401 KAR 5:005. The KISOP became effective on September 1, 2018 and expires on August 31, 2023. The District shall timely seek renewals of its KISOP throughout the Initial Term of this Agreement and all renewals or extensions thereof.

21. **Regulatory Approval.** The Parties acknowledge that this Agreement cannot become effective until it has been reviewed and accepted for filing by the PSC. The Parties shall jointly file an executed copy of this Agreement with the PSC. Each Party pledges its assistance to help expedite the PSC review process.

22. **Effective Date.** The Parties acknowledge that, in order for this Agreement to become effective, the PSC shall review this Agreement and accept it for filing. The Effective Date of this Agreement shall be the date upon which the PSC accepts the Agreement for filing.

23. **Notices.** If at any time either Party desires or is required to give notice to the other Party pursuant to the terms of this Agreement, such notice shall be in writing and shall be hand delivered or mailed by certified mail, return receipt requested. Notice shall be effective upon receipt. Notices shall be given to the Parties at the following addresses or such other place or other person as each Party shall designate by similar notice:



As to the City:

City of Elizabethtown
P.O. Box 550
200 West Dixie Avenue
Elizabethtown, KY 42702
Attention: Mayor

As to the District:

Hardin County Water District No. 2
P.O. Box 970
360 Ring Road
Elizabethtown, KY 42702
Attention: General Manager

24. **Response to Notices.** At any time either Party desires or is required to respond to any notice given pursuant to paragraph 22, such response shall be made in the manner prescribed by paragraph 22 and be given within fifteen (15) days after receipt of the notice unless otherwise provided in this Agreement.

25. **Non-Waiver.** Any waiver at any time by any Party hereto of its rights with respect to the other Party or with respect to any matter arising in connection with this Agreement shall not be considered a waiver of any such rights or matters at any subsequent time.

26. **Indemnification.** Each Party shall be solely responsible for the construction, operation, and maintenance of its respective... Each Party, to the extent permitted by law, expressly agrees to indemnify, save

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harmless and defend the other Party against all claims, demands, cost, or expense asserted by third parties and proximately caused by the negligence or willful misconduct of such indemnifying Party in connection with the construction, operation, and maintenance of its respective wastewater system.

27. **Liability Insurance.** During the term of this Agreement or any renewal or extension thereof, each Party shall, at its own expense, maintain comprehensive public liability insurance in an amount not less than the amount it currently maintains for claims for bodily injury or death or property damage. Each Party's policy shall name the other Party as an additional insured. Each Party shall provide the other Party with an up-to-date Certificate of Insurance.

28. **Successors and Assigns.** This Agreement shall be binding on the City, the District, and their respective successors and assigns.

29. **Interpretation.** The City and the District agree that both have participated in the drafting and negotiation of this Agreement and this Agreement shall not be interpreted against either Party by virtue of having participated in such drafting and negotiation.

30. **Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court, by the PSC, or by another administrative body of competent jurisdiction, the remaining provisions or

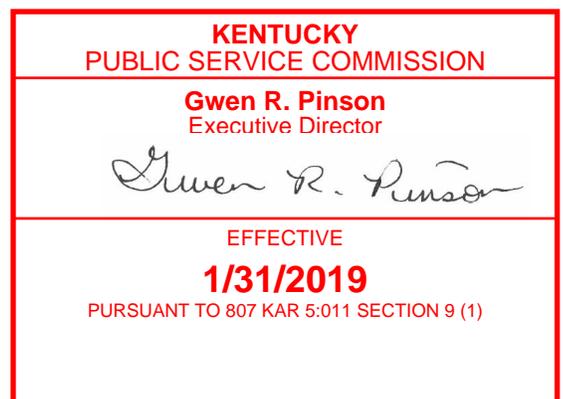
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paragraphs of this Agreement shall be fully enforceable and shall remain in full effect.

31. **Paragraph Headings.** The captions of this Agreement are for convenience only and are not to be construed as part of the Agreement, nor as defining, nor limiting in any way the scope of the provisions herein.

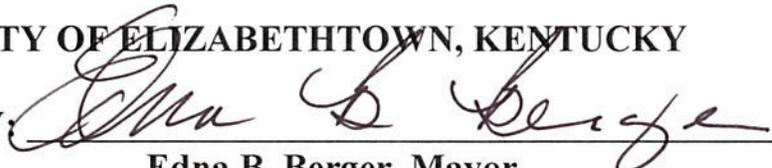
32. **Modifying Agreement.** This Agreement may not be altered, modified, or amended, except in a writing properly executed and approved by the City and the District.

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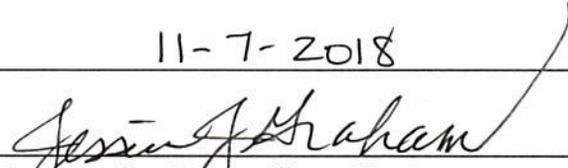


IN TESTIMONY WHEREOF, this Agreement has been executed in multiple counterparts, each of which is deemed to be an original, by the duly authorized officers and officials of the Parties.

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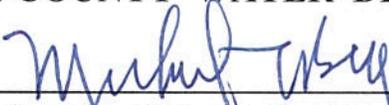
BY: 
Edna B. Berger, Mayor

DATE: 11-7-2018

ATTEST: 
Jessica Graham, City Clerk

Approved by the Elizabethtown City Council by adoption of Municipal Order #90-2018 on November 5, 2018.

HARDIN COUNTY WATER DISTRICT NO. 2

BY: 
Michael L. Bell, Chairman

DATE: 11/20/18

ATTEST: 
Morris L. Miller, Secretary

Approved by Resolution No. 2018-11-01 adopted by the Hardin County Water District No. 2 Board of Commissioners on November 20, 2018

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EXHIBIT A

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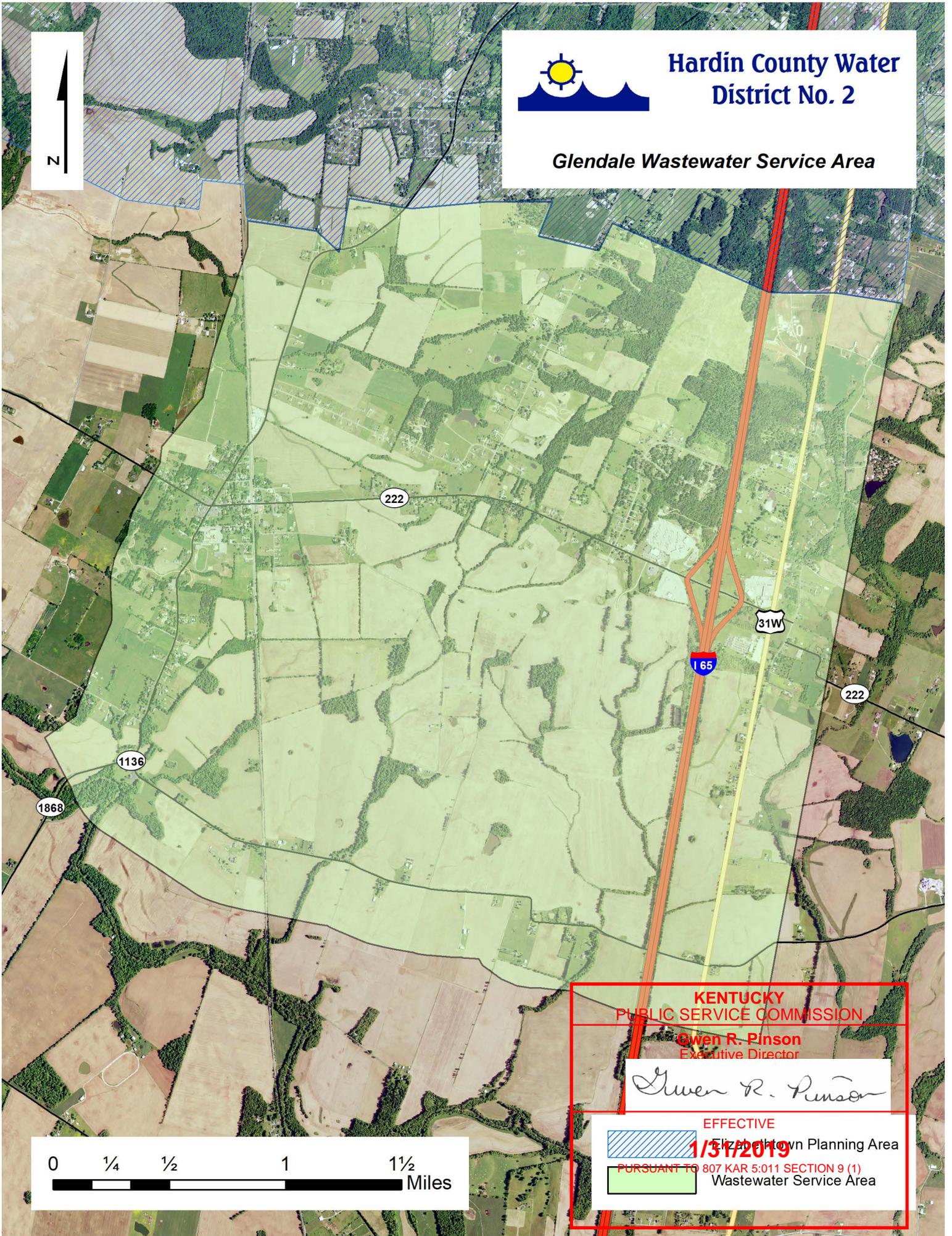
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Hardin County Water District No. 2

Glendale Wastewater Service Area



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Elizabeth Town Planning Area



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Wastewater Service Area

